



**NEVADA COMMISSION ON ETHICS
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION No. 04-46

SUBJECT: CARLOS GARCIA
SUPERINTENDENT OF SCHOOLS
CLARK COUNTY SCHOOL DISTRICT

A. JURISDICTION:

Superintendent Garcia is a public officer as defined by NRS 281.4365. As such, the Commission has jurisdiction over the complaint.

B. REPORT OF INVESTIGATIVE ACTIVITIES:

- Reviewed Request for Opinion 04-46 (Tab B)
- Reviewed subject's response dated July 18, 2004 (Tab C)
- Reviewed employment contract entered into by Garcia on April 6, 2000 (see subject's Exhibit A, under Tab C of this report)
- Conducted Lexis/Nexus research to determine whether any pecuniary links existed between Garcia and his Deputy Superintendent, Dr. Walt Rulffes
- Interviewed Ann Bersi, Legal Counsel for the Board of Trustees of the Clark County School District and Bill Hoffman, Legal Counsel for the Clark County School District
- Review of past Commission opinions relating to violations of NRS 281.481(2) and NRS 281.481(9) for similar fact patterns

C. RECOMMENDATIONS:

Based on investigative activities, the Executive Director recommends the Panel find that sufficient cause **DOES NOT EXIST** for the Commission to hear and render an opinion in this matter relating to the provisions of:

- NRS 281.481(2); and
- NRS 281.481(9).

SPECIFIC REASON:

No allegation or credible evidence of any fact that amounts to or supports a violation by any public officer of the above provision of NRS Chapter 281.

D. SUMMARY OF REQUEST FOR OPINION:

The Request for Opinion alleges violations of NRS 281.481(2) and NRS 281.481(9) by Carlos A. Garcia, Superintendent of the Clark County School District. The complaint specifically alleges that Superintendent Garcia violated these provisions of the ethics in government law by:

1. Using his position as Superintendent to acquire a new Ford Explorer XLT 4x4 at a cost of \$22,616.25 with additional Luxury Package at a cost of \$7,300.
2. Using his position as Superintendent to influence his subordinate, Dr. Walt Rulffes, Deputy Superintendent of Schools, to purchase the above listed vehicle thereby subverting the proper role of the Board of Trustees (Board).

It is alleged that these violations occurred when Superintendent Garcia caused to be purchased a new vehicle with luxury options that are unnecessary for the proper performance of his duties as Superintendent. The complaint alleges that the luxury options are exclusively for Superintendent Garcia's personal use and in no way assist him in the performance of his contractual duties as Superintendent. The complaint alleges that the luxury options are unwarranted pursuant to NRS 281.481(2) because they are without justification or adequate reason. The options and prices in question are as follows:

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|---|------------|
| • Off-road package, adjustable pedals with memory | \$4,470.00 |
| • Seating options, aux. climate controls 3 rd row seat package | \$1,280.00 |
| • Audio options-290W Audio System w/ 6 disc CD | \$ 510.00 |
| • Destination and delivery charges | \$ 645.00 |
| • Trailer tow package | \$ 395.00 |

The complaint also alleges that Superintendent Garcia used his official position to influence his subordinate, Dr. Walt Rulffes, Deputy Superintendent, to purchase the vehicle and the upgrades in violation of NRS 281.481(9). Additionally, the complaint alleges that by purchasing the vehicle with upgrades exclusively through his subordinate, Superintendent Garcia circumvented the approval process of the Board of Trustees, which is required for such a purchase.

E. SUMMARY OF SUBJECT'S RESPONSE:

In his response, Superintendent Garcia states that no provisions of NRS Chapter 281 were violated and submits the following in support of this assertion:

- Carlos Garcia was hired as the Superintendent of Schools for the Clark County School District by the Board of Trustees on April 6, 2000;
- The terms and conditions of his employment are set forth in the negotiated employment contract signed by Superintendent Garcia and the Board;
- The contract provides that “the board shall provide the Superintendent with a vehicle for business and personal use;”
- Superintendent Garcia asserts that Dr. Rulffes made the decision to replace Garcia’s “high-use” vehicle with a new vehicle because of required travel to school sites by Superintendent Garcia;
- Superintendent Garcia asserts that the contract provides that the vehicle provided by the Board is for his professional and personal use and that replacing the vehicle was not unwarranted under NRS 281.481(2);
- Superintendent Garcia also states that the upgraded options were not unwarranted. He claims that:
 - He has had four-wheel drive vehicles in the past and such vehicles are necessary for visits to school sites;
 - The third row seat was added to accommodate transportation of additional passengers in his role as Superintendent;
 - The tow hitch in addition to the four wheel drive is potentially useful equipment for the District to possess; and
 - The audio system is not an unreasonable upgrade for a personal use vehicle.

No mention was made by Superintendent Garcia of the Off Road Package with memory seating at a cost of \$4,470.00.

F. PERTINENT STATUTES AND REGULATIONS:

NRS 281.481(2)

A code of ethical standards is hereby established to govern the conduct of public officers and employees:

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(b) “Unwarranted” means without justification or adequate reason.

NRS 281.481(9):

9. A public officer or employee shall not attempt to benefit his personal or financial interest through the influence of a subordinate.

G. RESULTS OF INVESTIGATION:

Allegations regarding NRS 281.481(2): Based on evidence submitted both with the complaint and by the subject, it does not appear that credible evidence exists sufficient to substantiate a violation of NRS 281.481(2) with regard to the purchase of a new vehicle or the upgraded components. Superintendent Garcia accepted the position as Superintendent via a negotiated employment contract. This contract expressly stated that the “Board shall provide the Superintendent with a vehicle for business and personal use.” In accordance with this provision, Dr. Rulffes, acting in his position as Chief Financial Officer in charge of maintaining the school district’s fleet of vehicles, made the decision to rotate Garcia’s older vehicle to another driver within the school district and also to provide Garcia with a new vehicle. According to the evidence, Dr. Rulffes informed Garcia of his decision to make this rotation. It was at this point that Garcia apparently requested the upgrade of a third-row seat for the transportation of passengers while conducting visits to school construction sites.

In order for a violation of NRS 281.481(2) to be substantiated the following elements must be established:

1. That the public officer *used* his position to secure...
2. “Unwarranted” privileges, preferences, exemptions, or advantages.

As to the first element, the evidence does not suggest that Garcia used his position to secure the new vehicle or the upgrades. According to Bill Hoffman, legal counsel for the Clark County School District, the vehicle purchased and the manner in which it was purchased was what was intended by the contract provision. Mr. Hoffman also indicated that had Superintendent Garcia approached Dr. Rulffes about purchasing another vehicle, this would also have been within the intent of the contract. Although this second scenario might tend to signify Superintendent Garcia “using his position” to obtain this privilege, this does not appear to be what occurred in this instance. Dr. Rulffes appears to have made an independent decision and then approached Superintendent Garcia regarding this decision. The Commission has opined in a past opinion that an overt act by the public officer to obtain the privilege is suggested by NRS 281.481(2). In *NCOE Opinion No. 90-04* (November 17, 1991), the Commission on Ethics suggested that if the privilege is not requested by the public officer but instead is merely offered by another, the accepting of the privilege is not violative of the statute. Because the new vehicle was not requested by Garcia but was instead offered to him by the person in charge of maintaining the fleet, it does not appear that the acceptance of the vehicle would support a violation of NRS 281.481(2).

Additionally, the complaint alleges that Superintendent Garcia circumvented the Board’s approval by acting exclusively through Dr. Rulffes. According to both Ann Bersi and Bill Hoffman, there was no such circumvention here. Both explain that the Board does not approve or deny a specific request for such a purchase, but rather approves a general budget. There has never been an instance where the Board decided or approved the type of vehicle or the vehicle options for any superintendent. Accordingly, it appears that Superintendent Garcia did not circumvent the Board’s approval process as alleged in the complaint.

However, when Superintendent Garcia was approached by Dr. Rulffes about the purchase of a new vehicle, Superintendent Garcia did request at least a portion of the upgraded components,

vis-à-vis the third seat option. Therefore, the analysis regarding a potential violation of NRS 281.481(2) then turns to whether Garcia “used his position” to secure the upgraded components.

By nature of his position as Superintendent, Carlos Garcia is superior in hierarchy to Dr. Rulffes. This elevated position above Dr. Rulffes presents a potential conflict with regard to Garcia requesting the upgrades. The mere inequality in positions might act to implicate NRS 281.481(2) when it is Superintendent Garcia requesting the upgrades rather than Dr. Rulffes offering upgraded options. Since Dr. Rulffes is Superintendent Garcia’s subordinate, he might not feel as though he has the power to deny Garcia’s requested upgrades. This places Dr. Rulffes in the untenable position of approving the upgrades because of his desire to please his boss while still having to consider his fiduciary duty as Chief Financial Officer of the District. Although Dr. Rulffes might not have considered Superintendent Garcia’s superior position when approving the upgrades, the mere fact that Garcia has this power over the person from whom he requested the upgrades might be considered “using” his power to secure this benefit. In *NCOE Opinion No. 93-34* (July 12, 1995), the Commission on Ethics opined that the mere perception of coercion or lack of choice is sufficient to create the perception of governmental authority being used to obtain benefits. Because Dr. Rulffes holds a subordinate position to Superintendent Garcia, he may not have felt as though he had a choice to deny Superintendent Garcia’s request. This perception might, therefore, amount to using his power to gain a privilege.

Under the supposition that Superintendent Garcia did, in fact, use his position to secure these upgrades, the question then becomes whether the upgrades were unwarranted pursuant to NRS 281.481(2) and as further defined by NRS 281.481(2)(b), which defines ‘unwarranted’ as without justification or adequate reason. In the past, the Commission has not provided a set formula to use in determining whether a privilege is unwarranted but instead conducts an independent analysis when presented with this issue. The Commission has suggested that privileges may be “unwarranted” pursuant to NRS 281.481(2) if the person providing the privileges is not acting voluntarily, but is instead acting out of an actual or perceived coercion.

Although Dr. Rulffes is in a subordinate position to Superintendent Garcia, there is no evidence suggesting that any real or perceived coercion was influencing Dr. Rulffes’ decision. Dr. Rulffes’ affidavit suggests that Dr. Rulffes was acting in accordance with the employment contract between Superintendent Garcia and the Board, and was also acting within his role as Chief Financial Officer (CFO) of the District. There was no evidence offered that suggested that Dr. Rulffes was acting involuntarily when approving the upgrades. In fact, Dr. Rulffes must also act in accordance with his fiduciary obligations as CFO when making such financial decisions. There was no evidence presented suggesting that Dr. Rulffes neglected this duty when approving the upgrades. Accordingly, the upgrades were not unwarranted due to a perceived or actual coercion.

Although the upgrades were not unwarranted due to coercion, they could be considered unwarranted if they were obtained without justification or without adequate reason. Superintendent Garcia had a contract that specifically allowed for the Board to provide him with a vehicle for both his professional and *personal* use. Each upgrade must then be considered as it relates to this contract provision to determine whether it is either unjustified or without adequate reason.

The requested upgrade of a third row seat for the transportation of passengers while making site visits was requested, according to Superintendent Garcia's response, expressly as a professional use. School construction site visits are one of the many duties required by the Superintendent in carrying out his official duties. If Superintendent Garcia opts to or is required to bring additional person on site visits, the additional persons need to be accommodated in terms of seating availability. The complaint alleges extra seating is unwarranted. However, the upgrade appears neither unjustified, as it allows him to carry out his duties, nor without adequate reason. The reason proffered falls squarely within the professional use language of the contract.

The off-road package with adjustable pedals with memory was not specifically mentioned in Superintendent Garcia's response; rather, it merely made mention of the 4x4 capability in conjunction with the tow package. The District argues that it is beneficial for the District to have this option on a district-owned vehicle. Moreover, it appears to be within the District's sole discretion to determine what is reasonable under the terms of the Superintendent's contract. Because the District considers this purchase reasonable, the addition of the option would not be unjustified or without adequate reason. Additionally, Superintendent Garcia could have requested this package based on his personal use of the vehicle. This, too, would have been within his rights under the personal use language of the employment contract.

The upgraded audio system with 6-disc changer was mentioned specifically in Superintendent Garcia's response. It was asserted that this upgrade was for Garcia's personal use and is not an uncommon component on new vehicles and therefore is not unreasonable. The employment contract specifically provided that the vehicle should be for *both* Garcia's professional and *personal* use. The upgraded CD player is not unjustified not without adequate reason as it is allowable under the contract. If the District wanted to ensure a specific vehicle and allowable upgrades, it would have done so in the contract since it was in the unique position to devise the contract however it saw fit. That it did not place restrictions on the purchase of the vehicle can only mean that no such restrictions were desired.

Finally, the complaint alleges the purchase included destination and delivery charges as one of the questioned upgrades. This provision is included on all vehicle purchases and was in no way a benefit to Superintendent Garcia. Therefore, this seems warranted, justified, and with adequate reason.

Allegations regarding NRS 281.481(9): Based on evidence submitted both with the complaint and by the subject, it does not appear that credible evidence exists sufficient to substantiate a violation of NRS 281.481(9) relating to the purchase of the new vehicle. According to both Superintendent Garcia's response and Dr. Rulffes' affidavit it was Dr. Rulffes' decision as Chief Financial Officer and administrator of the motor pool to replace Superintendent Garcia's vehicle. In order to sustain a violation of this statute, there would have to be some indication that, at a minimum, Superintendent Garcia instructed Dr. Rulffes to approve the requisition of the vehicle for Superintendent Garcia. However, the evidence does not support such a scenario. It appears to have been Dr. Rulffes' independent decision to rotate Superintendent Garcia's former vehicle to another employee and to purchase a new vehicle for Superintendent Garcia.

Similarly, the evidence does not appear to substantiate a violation of NRS 281.481(9) with regard to the purchase of the upgrades. For a violation to be supported, there should be evidence indicating that Superintendent Garcia used his position of trust and power to influence his subordinate in acquiring those upgrades. No evidence submitted suggests that Dr. Rulffes acted involuntarily or because of an actual or perceived coercion. The evidence suggests that Dr. Rulffes approached Superintendent Garcia about purchasing a new vehicle and Superintendent Garcia requested a third row seat for transporting passengers while on site visits. Although there is no mention of the additional upgrades or how those upgrades were added, there is also an absence of evidence suggesting any undue influence by Superintendent Garcia to obtain those additional upgrades. Accordingly, there does not appear to be a violation of NRS 281.481(9) with regard to either the purchase of the vehicle or the upgraded components.

H. CONCLUSION:

The Executive Director hereby recommends that the panel find no just and sufficient cause exists for the Commission to hold a hearing and render an opinion on the allegations that the subject violated NRS 281.481(2) or NRS 281.481(9), and further that the allegations be dismissed.

DATED: ____ *November 30, 2004* ____

____ *Stacy M. Jennings* ____
STACY M. JENNINGS, MPA
EXECUTIVE DIRECTOR